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To: U.S. Patent and Trademark Office –
Examiner: R. BROWN
Group Art Unit: 2611

From: Christian R. Andersen
Sr. Paralegal – Intellectual Property

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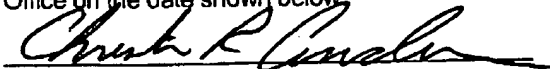
FORMAL SUBMISSION OF:

- 1) Transmittal Form;
- 2) Reply Brief Under 37 C.F.R. § 1.193;
- 3) Revocation of Power of Attorney with New Power of Attorney; and
- 4) Statement Under 37 CFR 3.73(b)

Title: METHOD AND APPARATUS FOR NEAR VIDEO ON DEMAND
Serial No. 09/204,523
Filing Date: December 3, 1998
First Named Inventor: Andrew FRANSMAN
Atty. No. 97-823 RCE 1

CERTIFICATE OF FACSIMILE TRANSMISSION

I hereby certify that the above-referenced documents are facsimile transmitted to the Patent and Trademark Office on the date shown below:


Christian R. Andersen

Date of Transmission: March 15, 2004

Patent
Attorney's Docket No. 97-823RCE1

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Patent Application of)
Andrew FRANSMAN et al.) Group Art Unit: 2611
Application No.: 09/204,523) Examiner: R. Brown
Filed: December 3, 1998)
For: METHOD AND APPARATUS FOR)
NEAR VIDEO ON DEMAND)

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TRANSMITTAL FOR REPLY BRIEF

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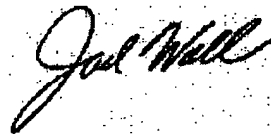
Sir:

Submitted herewith in triplicate is Appellant's Reply Brief in response to the Examiner's
Answer mailed January 15, 2004, in the above-identified application.

The Commissioner is hereby authorized to charge any other appropriate fees that may be
required by this paper that are not accounted for above, and to credit any overpayment, to
Deposit Account No. 07-2347.

Respectfully submitted,

VERIZON CORPORATE SERVICES GROUP INC.



By: _____

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Date: March 15, 2004

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PATENT

Attorney Docket No. 97-823RCE1

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W. Lawler
3/19/04

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

In re Patent Application of)	Mail Stop: APPEAL BRIEF - PATENTS
)	
Andrew FRANSMAN et al.)	Customer No. 32127
)	
Application No.: 09/204,523)	Group Art Unit: 2611
)	
Filed: December 3, 1998)	Examiner: R. Brown
)	
For: METHOD AND APPARATUS)	
FOR NEAR VIDEO ON DEMAND)	

REPLY BRIEF UNDER 37 CFR § 1.193

Mail Stop: Appeal Brief - Patents
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

This Reply Brief is submitted in response to the Examiner's Answer, mailed January 15, 2004.

In the Response to Arguments section of the Examiner's Answer (pages 8-15), the Examiner addressed the following arguments from the Appeal Brief, filed October 17, 2003: (1) Clark, Nouri et al., and Ritchie, Jr. et al. do not disclose a test channel dedicated solely to testing a selected asset, where the assets include video content scheduled for staggered transmission to subscribers of a NVOD system, as recited in claim 1 (Examiner's Answer, pages 10-13); (2) Clark, Nouri et al., and Ritchie, Jr. et al. do not disclose a graphical user interface that allows an administrator to view the selected asset using the test channel to verify the integrity of the

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selected asset loaded into the video server, as also recited in claim 1; (3) further with respect to claim 1, one skilled in the art would not have been motivated to combine the disclosures of Clark, Nouri et al., and Ritchie, Jr. et al. in the manner suggested by the Examiner, absent impermissible hindsight (Examiner's Answer, page 13); and (4) Clark, Nouri et al., Ritchie, Jr. et al., and Gardner et al. do not recite a head-end configuration manager that is responsive to commands from an administrator and arranged to track configuration parameters of a head-end of the NVOD system, where the configuration parameters determine NVOD channel allocations, as recited in claim 4 (Examiner's Answer, pages 14-15).

Appellants note that the Examiner did not address some of the arguments presented in the Appeal Brief. For example, the Examiner did not address the following arguments: (a) with respect to claim 4, one skilled in the art at the time of Appellants' invention would not have been motivated to combine the disclosures of Clark, Nouri et al., Ritchie, Jr. et al., and Gardner et al. in the manner suggested by the Examiner, absent impermissible hindsight; (b) with respect to claim 17, one skilled in the art at the time of Appellants' invention would not have been motivated to combine the disclosures of Clark, Davis et al., and Ritchie, Jr. et al. in the manner suggested by the Examiner, absent impermissible hindsight; (c) with respect to claim 19, one skilled in the art would not have been motivated to combine the disclosures of Clark, Davis et al., Ritchie, Jr. et al., and Nouri et al. in the manner suggested by the Examiner, absent impermissible hindsight; (d) the Examiner did not address the specific features recited in Appellants' claim 20 and, thus, did not establish a *prima facie* case of obviousness with respect to claim 20; (e) further with respect to claim 20, one skilled in the art at the time of Appellants' invention would not have

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been motivated to combine the disclosures of Clark, Davis et al., Ritchie, Jr. et al., and Nouri et al. in the manner suggested by the Examiner, absent impermissible hindsight; and (f) the Examiner did not establish a *prima facie* case of obviousness with respect to claim 24 by not providing any documentation to support the position that the features of Appellants' claim 24 are well-known in the art. Appellants contend that the failure to address these arguments presented with respect to claims 4, 17, 19, 20, and 24 is an admission that those arguments are persuasive. Accordingly, Appellants respectfully request that the rejection of claims 4, 17, 19, 20, and 24 be reversed.

With respect to argument (1) that Clark, Nouri et al., and Ritchie, Jr. et al. do not disclose a test channel dedicated solely to testing a selected asset, where the assets include video content scheduled for staggered transmission to subscribers of a NVOD system, as recited in claim 1, the Examiner alleges that "Clark unequivocally teaches a test channel for testing a selected asset, where the asset include video content scheduled for staggered transmission to subscribers of a NVOD system" and points to col. 4, lines 36-67, and col. 5, lines 10-24, of Clark for support (Examiner's Answer, page 10). Appellants disagree.

At col. 4, lines 36-67, Clark discloses:

The serving computer 15 also monitors the status of the video players 17 and operates promotional channel video players 18. Operations are controlled through a menu. An operator display provides video player status monitoring. A status screen indicates whether a video playback machine is playing, rewinding, waiting to start playing, not in use, setting-up, or has failed. Provision of an alarm during video player failure is included. Monitors (not shown) show what is on a selected channel.

A commercially available parallel bus 16 provides a communications path between an output port of serving computer 15 and video players 17 and 18,

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allowing the serving computer 15 to automatically operate the control features of the video players. Bus 16 includes one or more bus controller panels which provide control signals in response to the real time outputs of the computer 15. These in turn operate video player parallel decoders, each of which can control several video players.

Video players 17 are used for playing recorded media containing programs in television format or for coupling a line feed from a live program. The video players 17 may be any controllable player means such as video cassette recorders (VCRs) or disk players. Pre-recorded video cassette format is the most frequently used medium for video storage in the preferred embodiment of the present invention. Video cassette players may be software controlled for automatic rewind and playback of tapes. Optical disks are another storage medium. An attractive feature of optical disk players is the capability of multiple playing heads reading a disk.

This section of Clark discloses the ability to monitor the status of video players. At the outset, Appellants note that video players are not video content that may be scheduled for staggered transmission to subscribers of a NVOD system, but rather provide video content. For example, one skilled in the art would readily recognize that Clark does not disclose or suggest the staggered transmission of video players to subscribers of a NVOD system. Instead, video players provide video content. The Examiner seems to recognize this distinction on page 9 of the Examiner's Answer, but does not point to any section of Clark that discloses or even suggests the testing of video content. Clark does not disclose or suggest that the status screen allows for the video content within the video players to be tested.

Even assuming that one skilled in the art could reasonably construe the recited video content to correspond to Clark's video players, Clark does not disclose or suggest that the status screen allows for the testing of the video players. Instead, Clark specifically discloses that a status screen may indicate whether a video playback machine is playing, rewinding, waiting to

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start playing, not in use, setting-up, or has failed (col. 4, lines 42-44). Monitoring the status of a video player (i.e., monitoring whether it is playing, rewinding, etc.) is not the same as testing the video player. Contrary to the Examiner's position, Clark does not disclose or suggest that the status screen can be used to test a selected asset, where the asset includes video content scheduled for staggered transmission to subscribers of a NVOD system, as required by Appellants' claim 1.

At col. 5, lines 10-24, Clark discloses:

The video players 17 play video selections starting at times specified by the exhibition plan. Each player can be set for different start times. At the start time, the medium is played at the start of the active program, which is not necessarily the beginning of the medium. At the end of the program the medium is automatically rewound, if necessary, and set to the program start.

In the preferred embodiment of the present invention, at least two of the video players 17 are loaded with duplicate recorded media and controlled to play at staggered or overlapping time intervals. This staggered timing of a single program on multiple channels allows subscribers to have access to desired video nearly on demand.

This section of Clark discloses the ability of video players 17 to play video selections (i.e., video content) at staggered times. Contrary to the Examiner's position, this section of Clark in no way discloses or suggests a test channel for testing a selected asset, where the asset includes video content scheduled for staggered transmission to subscribers of a NVOD system. In fact, this section of Clark in no way discloses testing.

Further with respect to this feature, the Examiner alleges that Ritchie, Jr. et al. is relied upon "only to teach the feature of a 'test channel dedicated solely for testing'" and Clark is relied upon for allegedly disclosing "a test channel for testing a selected asset, wherein the selected

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includes video content to be distributed to subscribers in a staggered transmission as NVOD" (Examiner's Answer, pages 10 and 11). At the outset, Appellants note, as set forth above and in Appellants' Appeal Brief, that Clark does not disclose a test channel for testing a selected asset, where the asset includes video content scheduled for staggered transmission to subscribers of a NVOD system, as required by claim 1. Moreover, Appellants continue to object to the Examiner's piecemeal examination of this feature of Appellants' claim 1. Appellants' arguments presented in the Appeal Brief regarding the Examiner's piecemeal examination of Appellants' feature of a test channel dedicated solely to testing a selected asset, where the assets include video content scheduled for staggered transmission to subscribers of a NVOD system, are incorporated by reference herein.

Appellants note that the Examiner's position in the Examiner's Answer with respect to this feature of claim 1 is different than the position taken in the final Office Action. In the Examiner's Answer, the Examiner points to Ritchie, Jr. et al. as allegedly disclosing a test channel dedicated solely for testing and Clark as allegedly disclosing a test channel for testing a selected asset that includes video content for staggered transmission to subscribers of a NVOD system (Examiner's Answer, pages 10 and 11). By contrast, in the final Office Action, the Examiner relied on the combination of Clark and Nouri et al. for allegedly disclosing a test channel for testing a selected asset that includes video content for staggered transmission to subscribers of a NVOD system (final Office Action, page 6).

In both cases, instead of addressing this entire feature, the Examiner appears to break the feature down into parts and points to sections of Ritchie, Jr. et al., Clark, and Nouri et al. (or

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Ritchie, Jr. et al. and Clark) that allegedly disclose each of the individual parts. Put another way, instead of addressing a test channel dedicated solely to testing a selected asset, where the assets include video content scheduled for staggered transmission to subscribers of a NVOD system, the Examiner points to sections of Ritchie, Jr. et al. that allegedly disclose a test channel and sections of Clark (and Nouri et al.) that allegedly disclose testing an asset that includes video content scheduled for staggered transmission to subscribers of a NVOD system, but does not specifically point out where in Ritchie, Jr. et al., Clark, or Nouri et al. this entire feature is disclosed. Appellants object to the piecemeal examination of this feature.

For at least the foregoing reasons and for those reasons given in the Appeal Brief, Appellants respectfully solicit the Honorable Board to reverse the outstanding rejection of claim 1.

With respect to argument (2) that Clark, Nouri et al., and Ritchie, Jr. et al. do not disclose a graphical user interface that allows an administrator to view the selected asset using the test channel to verify the integrity of the selected asset loaded into the video server, as also recited in claim 1, the Examiner reiterates many of the same allegations presented in the final Office Action. These allegations were addressed in the Appeal Brief. In addition, the Examiner alleges with respect to combining Nouri et al. and Clark, "it would have been obvious ... to utilize GUI technology with Clark for the advantages of a user friendly interaction, as disclosed by Nouri" (Examiner's Answer, page 10). Appellants submit that this allegation is merely conclusory and insufficient for establishing a *prima facie* case of obviousness.

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As set forth above, Clark discloses the use of a status screen for indicating whether a video playback machine is playing, rewinding, etc. (col. 4, lines 42-44). The Examiner's allegation seems to indicate that Clark's status screen is not user friendly and that incorporating Nouri et al.'s GUI would make it user friendly. This allegation is unsupported by the Clark disclosure. Clark in no way discloses or suggests that the status screen is not user friendly. Moreover, the Examiner does not point to any section of Clark that supports this allegation. Appellants submit that the Examiner's motivation for combining Clark and Nouri et al. is merely conclusory and insufficient for establishing a *prima facie* case of obviousness.

For at least the foregoing reasons and for those reasons presented in the Appeal Brief, Appellants respectfully solicit the Honorable Board to reverse the outstanding rejection of claim 1.

With respect to argument (3) that one skilled in the art would not have been motivated to combine the disclosures of Clark, Nouri et al., and Ritchie, Jr. et al. in the manner suggested by the Examiner, absent impermissible hindsight, the Examiner alleges that Ritchie, Jr. et al. "teaches that the system operators are concerned with the allocation of bandwidth for numerous new and old services. It is incumbent upon the operator to properly plan which services will use which bandwidth, i.e. frequencies, in order to efficiently operate a multi-channel headend and to overcome numerous well known problems associated with multiplexing data, such as overlapping channels, not enough bandwidth available when needed or wasting unused bandwidth" (Examiner's Answer, page 13). Regardless of the veracity of these allegations, the

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Examiner has not logically explained why one skilled in the art would have been motivated to incorporate Ritchie, Jr. et al.'s alleged disclosure of a test channel dedicated solely for testing into the Clark system. Without proper motivation, a *prima facie* case of obviousness cannot be established.

For at least these additional reasons and for the reasons presented in the Appeal Brief, Appellants respectfully solicit the Honorable Board to reverse the outstanding rejection of claim 1.

With respect to argument (4) that Clark, Nouri et al., Ritchie, Jr. et al., and Gardner et al. do not recite a head-end configuration manager that is responsive to commands from an administrator and arranged to track configuration parameters of a head-end of the NVOD system, where the configuration parameters determine NVOD channel allocations, as recited in claim 4, the Examiner relies for the first time on col. 2, lines 24-33, and continues to rely on col. 5, lines 20-25, of Gardner et al. for allegedly disclosing this feature (Examiner's Answer, page 14). Appellants submit that these sections of Gardner et al. in no way disclose or suggest the above feature of Appellants' claim 4.

At col. 2, lines 24-33, Gardner et al. discloses:

Generally, a networked system includes a plurality of media servers each having a plurality of disk drives over which one or more data files are distributed. The principles of the invention superimpose a hierarchical analysis on the available bandwidths in the system in order to optimally balance bandwidth across the system at data retrieval time. This efficient balancing of I/O bandwidth eliminates "overkill" in computing resources and I/O resources which would otherwise wastefully allocate resources when they are not truly needed.

This section of Gardner et al. discloses the distribution of data files over a plurality of disk

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drives. This section of Gardner et al. in no way discloses or suggests a head-end configuration manager that is responsive to commands from an administrator and arranged to track configuration parameters of a head-end of the NVOD system, where the configuration parameters determine NVOD channel allocations, as required by claim 4. In fact, this section of Gardner et al. in no way relates to a head-end of a NVOD system.

At col. 5, lines 20-25, Gardner et al. discloses:

The foregoing considerations, which are factored into how a computer system should be configured, can be advantageously used to determine where and how data blocks should be distributed in the system for a particular data file in order to optimize data access and guarantee isochronous data streams for applications such as video-on-demand.

This section of Gardner et al. discloses factors that should be considered in distributing data blocks for a particular data file. This section of Gardner et al. in no way discloses or suggests a head-end configuration manager that is responsive to commands from an administrator and arranged to track configuration parameters of a head-end of the NVOD system, where the configuration parameters determine NVOD channel allocations, as required by claim 4. In fact, this section of Gardner et al. in no way relates to a head-end of a NVOD system.

For at least the foregoing reasons and for those reasons set forth in the Appeal Brief, Appellants respectfully solicit the Honorable Board to reverse the outstanding rejection of claim 4.

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In view of the foregoing arguments and the arguments set forth in the Appeal Brief, Appellants respectfully solicit the Honorable Board to reverse the outstanding rejections of claims 1-8, 17-25, and 27.

To the extent necessary, a petition for an extension of time under 37 C.F.R. § 1.136 is hereby made. Please charge any shortage in fees due in connection with the filing of this paper, including extension of time fees, to Deposit Account No. 07-2347 and please credit any excess fees to such deposit account.

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Reg. No. 25,648

Date: March 15, 2004

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